

# **EXHIBIT 2**

## Fehribach, Joseph

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**From:** Pollack-Milgate, Deborah  
**Sent:** Friday, December 1, 2023 3:46 PM  
**To:** Duncan Byers  
**Cc:** Moye, John; Fehribach, Joseph  
**Subject:** RE: [EXTERNAL] RE: Defendant's Proposed Claim Construction

Duncan,

Your responses are unacceptable and shocking given the delay you have already caused. As part of the complaint in this matter, you provided an opinion of counsel. That results in a waiver of privilege. If you need authority for this very clear proposition, let me know.

Additionally, after failing to respond on multiple occasions you stated: "I am confirming that we will produce **everything that we have responsive to the discovery requests.**" Based on this representation, we understood that you would be producing documents in full as requested and as were **responsive** to the requests (as you indicated). Trimaco thought that your delay had not compromised our scheduling order because we would receive *Markman*-related discovery within the discovery window, which closes on **December 7, 2023**. This was not so.

Please confirm that you produce all documents related to the opinion of counsel by Monday as originally requested – and confirmed by you. Otherwise, we will need to move to compel. Now that you have also decided to test the products **after the fact** for purported infringement, please also produce the test protocols. We have no ability to understand the test methods followed and require that information immediately as part of the *Markman* discovery.

Very truly yours,

Deborah

**Deborah Pollack-Milgate** | Partner

Barnes & Thornburg LLP

11 South Meridian Street, Indianapolis, IN 46204

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**From:** Duncan Byers <dbyers@dbyerslaw.com>  
**Sent:** Monday, November 27, 2023 10:15 PM  
**To:** Pollack-Milgate, Deborah <Deborah.PollackMilgate@btlaw.com>  
**Cc:** Moye, John <JMoye@btlaw.com>; Fehribach, Joseph <Joseph.Fehribach@btlaw.com>  
**Subject:** RE: [EXTERNAL] RE: Defendant's Proposed Claim Construction

**Caution: This email originated from outside the Firm.**

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See attached.

**Duncan G. Byers**

**BYERS LAW**

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<https://www.linkedin.com/in/duncangbyers/>

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**From:** Pollack-Milgate, Deborah <[Deborah.PollackMilgate@btlaw.com](mailto:Deborah.PollackMilgate@btlaw.com)>

**Sent:** Monday, November 27, 2023 10:15 AM

**To:** Duncan Byers <[dbyers@dbyerslaw.com](mailto:dbyers@dbyerslaw.com)>

**Cc:** Moye, John <[JMoye@btlaw.com](mailto:JMoye@btlaw.com)>; Fehribach, Joseph <[Joseph.Fehribach@btlaw.com](mailto:Joseph.Fehribach@btlaw.com)>

**Subject:** RE: [EXTERNAL] RE: Defendant's Proposed Claim Construction

Duncan,

So far as I can tell, you are late yet again in providing responses and documents. Please advise why we should not bring a motion to compel or move for other sanctions.

Thank you,

Deborah

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**From:** Duncan Byers <[dbyers@dbyerslaw.com](mailto:dbyers@dbyerslaw.com)>  
**Sent:** Friday, November 17, 2023 2:42 PM  
**To:** Pollack-Milgate, Deborah <[Deborah.PollackMilgate@btlaw.com](mailto:Deborah.PollackMilgate@btlaw.com)>  
**Cc:** Moye, John <[JMoye@btlaw.com](mailto:JMoye@btlaw.com)>; Fehribach, Joseph <[Joseph.Fehribach@btlaw.com](mailto:Joseph.Fehribach@btlaw.com)>  
**Subject:** RE: [EXTERNAL] RE: Defendant's Proposed Claim Construction

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I am confirming that we will produce everything that we have responsive to the discovery requests.

**Duncan G. Byers**

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**From:** Pollack-Milgate, Deborah <[Deborah.PollackMilgate@btlaw.com](mailto:Deborah.PollackMilgate@btlaw.com)>  
**Sent:** Friday, November 17, 2023 2:35 PM  
**To:** Duncan Byers <[dbyers@dbyerslaw.com](mailto:dbyers@dbyerslaw.com)>  
**Cc:** Moye, John <[JMoye@btlaw.com](mailto:JMoye@btlaw.com)>; Fehribach, Joseph <[Joseph.Fehribach@btlaw.com](mailto:Joseph.Fehribach@btlaw.com)>  
**Subject:** Re: [EXTERNAL] RE: Defendant's Proposed Claim Construction

Duncan,

This does not explain why you ignored the discovery responses and objections and all follow up until now.

We need documents and responses by next Friday. Please confirm that you will produce them because we have already drafted our motion to compel based on weeks of no response.

I am not trying to be rude, but the lack of responsiveness is not ok and wastes our time.

Have a good weekend,

Deborah

Sent from my iPhone

On Nov 17, 2023, at 2:17 PM, Duncan Byers <[dbyers@dbyerslaw.com](mailto:dbyers@dbyerslaw.com)> wrote:

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Deborah –

Apologies; I'm just getting back to work from a week fighting a respiratory infection and trying to get caught up. I will get you responses tomorrow.

**Duncan G. Byers**

**BYERS LAW**

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**From:** Pollack-Milgate, Deborah <[Deborah.PollackMilgate@btlaw.com](mailto:Deborah.PollackMilgate@btlaw.com)>

**Sent:** Wednesday, November 15, 2023 9:17 AM

**To:** Duncan Byers <[dbyers@dbyerslaw.com](mailto:dbyers@dbyerslaw.com)>; Moyer, John <[JMoyer@btlaw.com](mailto:JMoyer@btlaw.com)>

**Cc:** Fehribach, Joseph <[Joseph.Fehribach@btlaw.com](mailto:Joseph.Fehribach@btlaw.com)>

**Subject:** RE: Defendant's Proposed Claim Construction

Dear Duncan,

Unless I have missed something, you have served neither responses nor objections nor produced any documents. Accordingly, we will file a motion to compel. If I have missed something, please let me know immediately.

Deborah

**Deborah Pollack-Milgate** | Partner

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**From:** Pollack-Milgate, Deborah

**Sent:** Monday, October 30, 2023 4:52 PM

**To:** 'Duncan Byers' <[dbyers@dbyerslaw.com](mailto:dbyers@dbyerslaw.com)>; Moye, John <[JMoye@btlaw.com](mailto:JMoye@btlaw.com)>

**Cc:** Fehribach, Joseph <[Joseph.Fehribach@btlaw.com](mailto:Joseph.Fehribach@btlaw.com)>

**Subject:** RE: Defendant's Proposed Claim Construction

Duncan,

We served document requests on you in August and have to date, so far as I know, received neither objections nor documents.

Please provide documents and objections by the end of next week. In the absence of your cooperation, we will move to compel. We reserve all rights, again, to raise objections, including seeking dismissal, based on the failure to follow the deadlines in this matter.

Thank you for your cooperation.

Deborah

**Deborah Pollack-Milgate** | Partner

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